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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY DOUGLAS NIXON,

Petitioner,

v.

ELDON VAIL,

Respondent.

Case No. C09-5013 FDB/KLS

ORDER TO AMEND PETITION

This habeas corpus petition has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Larry Douglas Nixon seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. # 3.

The Court notes that Mr. Nixon has failed to name the correct Respondent, thereby depriving this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984).

28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person

1 having a day-to-day control over the prisoner. That person is the only one who can produce ‘the
2 body’ of the petitioner.” *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

3 Therefore, Mr. Nixon’s custodian for purposes of his habeas corpus petition challenging the
4 execution of his Washington state sentence, is the warden of the prison where he is currently
5 confined. *See, e.g., Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*,
6 875 F.2d 244, 249 (9th Cir. 1989).

7 Because Mr. Nixon is a Washington state prisoner housed in an out-of-state facility, he
8 should also name the Washington Attorney General as a respondent.

9 Accordingly, it is **ORDERED**:

- 10 (1) Mr. Nixon shall amend his petition to name his immediate custodian and warden and
11 the Washington Attorney General as Respondents, and shall provide the Court with
12 sufficient copies of the first page of the Petition reflecting the properly named
13 Respondents for service **on or before February 27, 2009**.
- 14 (2) The Court Clerk is directed to send a copy of this Order and a form 28 U.S.C. § 2254
15 petition to Mr. Nixon, and to note this matter for the Court’s **February 27, 2009**
16 calendar.

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18 DATED this 30th day of January, 2009.

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22 Karen L. Strombom
23 United States Magistrate Judge
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